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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2354 OF 2007
IN
SUIT NO.3221 OF 1984

Atul Dhirajlal Sohani & ors. Plaintiffs
versus
Babubhai M. Choksey and others Defendants.

Mr.D.s.Chadnani for applicant i/by M/s.Lexim Associates.

Mr.Anuj Narula i/by Jhangiani & Narula Associates for defendant no.2.

Mr.D.Devkar, 1st Asstt., Court Receiver.

Mr.A.P.Garam, Asstt. Prothonotary (Adm.), rep. of Court Receiver.

CORAM : A.M.KHANWILKAR, J.

DATE : 17th August 2007

PC :

1. Heard counsel for the parties. This is a case of frivolous proceedings resorted to by a person against whom adverse order has ben passed on more than one occasion and right up to the Apex Court.

2. In the original application which is filed, however, all those relevant orders have been

suppressed by the applicant. It is the defendant no.2 while contesting the present motion, has produced those orders, which answers the contentious issues raised on behalf of the applicant. This is so because the order dated 17th June 2000 passed by Justice Kapadia on the Court Receiver's Report dated 19th October 1994 extensively deals with the claim of the applicant, as can be seen from the reasons from paras 3 and 4 of that order. Pursuant to the liberty given to the applicant, the applicant approached the Small Causes Court for interim relief. That proceeding has been answered against the applicant and prayer for interim relief has been rejected. That issue was carried by the applicant in the appeal before the Small Causes Court, which was also rejected. What is relevant for our purpose is the order passed by Justice Vazifdar on 10th June 2005 which is on the basis of Court Receiver's Report. Once again, this order deals with the claim of the applicant and the Court went on to direct the Court Receiver to comply with the order dated 17th June 2000 by handing over possession of the property to the concerned defendants in the state in which it existed as mentioned in the Court Receiver's Report dated 14/18th June 1985.

3. It is not in dispute that the applicant was represented by an Advocate when the above said orders were passed. Against the order dated 10th June 2005, the matter was carried in appeal by the applicant before the Division Bench of this Court being Appeal No.589 of 2005. That appeal has been dismissed on 20th July 2005 rejecting the claim of the applicant and instead requiring the Court Receiver to comply with the directions contained in order dated 17th June 2000. The decision of the Division Bench was challenged by the applicant right up to the Apex Court by way of Special Leave Petition (Civil) No.16598 of 2005 which also came to be rejected on 2nd September 2005.

4. There are other orders on which defendant no.2 seeks to rely to contend that the claim of the applicant has been scrutinized by the Courts on more than one occasion right up to the Apex Court.

5. It is not necessary to refer to all these proceedings and orders. The only contention that is raised in the present application is that the order passed on 17th June 2000 was the product of

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fraud played on the Court for which reason all subsequent directions issued to the Court Receiver will have to be ignored and held to be non-est. It is not possible to countenance this submission. The counsel for the applicant would rely on the document such as Sketch at page 46 of the motion. Besides, reliance is placed on the decision of the Small Causes Court dated 20th December 2000 passed in Interim Notice No.414 of 2000 and companion matters. However, this argument clearly overlooks that all these documents were very much in existence and could have brought to the notice of the Court on the earlier occasion when the applicant appeared in the proceedings in which an order came to be passed on 10th June 2005 by Justice Vazifdar, which order has attained finality. The applicant cannot be permitted to reopen the matter on such frivolous and unpalatable contentions.

6. In my opinion, this motion deserves to be dismissed at the threshold being founded on frivolous contentions and also because the applicant has not approached this Court with clean hands by suppressing material facts. I am also inclined to impose exemplary costs on the applicant for filing such frivolous application.

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Amount of costs is quantified at Rs.10,000/- (Rs.Ten thousand only) to be paid to the High Court Legal Services Authority within two weeks from today. Motion is dismissed with the above observations.

7. At this stage counsel for the applicant submits that the applicant desires to file an appeal for which reason operation of this order be stayed. That request is granted. This order shall not be given effect for a period of one week from today.

8. Counsel for the applicant further submits that as the appellant has remedy of appeal, the property in question be preserved. The Court Receiver informs that the suit property is already partly demolished. If it is so, status-quo as of today be maintained in respect of the suit property for a period of one week from today.

(A.M.KHANWILKAR, J.)